



Senate

General Assembly

File No. 69

February Session, 2008

Substitute Senate Bill No. 297

Senate, March 20, 2008

The Committee on Transportation reported through SEN. DEFRONZO of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DEPARTMENT OF MOTOR VEHICLES
AND ADMINISTRATIVE PER SE PROCEDURES AND VIOLATIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (74) of subsection (a) of section 14-1 of the
2 2008 supplement to the general statutes is repealed and the following
3 is substituted in lieu thereof (*Effective October 1, 2008*):

4 (74) "Second" violation or "subsequent" violation means an offense
5 committed not more than three years after the date of an arrest which
6 resulted in a previous conviction for a violation of the same statutory
7 provision, except in the case of a violation of section 14-215 of the 2008
8 supplement to the general statutes or 14-224, [or subsection (a) of
9 section 14-227a,] "second" violation or "subsequent" violation means an
10 offense committed not more than ten years after the date of an arrest
11 which resulted in a previous conviction for a violation of the same
12 statutory provision and in the case of a violation of subsection (a) of
13 section 14-227a, as amended by this act, "second" violation or
14 "subsequent" violation means an offense committed not more than

15 twenty years after the date of an arrest which resulted in a previous
16 conviction for a violation of the same statutory provision.

17 Sec. 2. Subsections (a) and (b) of section 14-227a of the general
18 statutes are repealed and the following is substituted in lieu thereof
19 (*Effective October 1, 2008*):

20 (a) No person shall operate a motor vehicle while under the
21 influence of intoxicating liquor or any drug or both. A person commits
22 the offense of operating a motor vehicle while under the influence of
23 intoxicating liquor or any drug or both if such person operates a motor
24 vehicle (1) while under the influence of intoxicating liquor or any drug
25 or both, or (2) while such person has an elevated blood alcohol content.
26 For the purposes of this section, "elevated blood alcohol content"
27 means a ratio of alcohol in the blood of such person that is eight-
28 hundredths of one per cent or more of alcohol, by weight, and "motor
29 vehicle" includes a snowmobile and all-terrain vehicle, as those terms
30 are defined in section 14-379, except that if such person is operating a
31 commercial motor vehicle, "elevated blood alcohol content" means a
32 ratio of alcohol in the blood of such person that is four-hundredths of
33 one per cent or more of alcohol, by weight.

34 (b) Except as provided in subsection (c) of this section, in any
35 criminal prosecution for violation of subsection (a) of this section,
36 evidence respecting the amount of alcohol or drug in the defendant's
37 blood or urine at the time of the alleged offense, as shown by a
38 chemical analysis of the defendant's breath, blood or urine shall be
39 admissible and competent provided: (1) The defendant was afforded a
40 reasonable opportunity to telephone an attorney prior to the
41 performance of the test and consented to the taking of the test upon
42 which such analysis is made; (2) a true copy of the report of the test
43 result was mailed to or personally delivered to the defendant [within
44 twenty-four hours or by the end of the next regular business day,] not
45 later than three business days after such result was known; [,
46 whichever is later;] (3) the test was performed by or at the direction of
47 a police officer according to methods and with equipment approved

48 by the Department of Public Safety and was performed in accordance
49 with the regulations adopted under subsection (d) of this section; (4)
50 the device used for such test was checked for accuracy in accordance
51 with the regulations adopted under subsection (d) of this section; (5)
52 an additional chemical test of the same type was performed at least
53 [thirty] ten minutes after the initial test was performed or, if requested
54 by the police officer for reasonable cause, an additional chemical test of
55 a different type was performed to detect the presence of a drug or
56 drugs other than or in addition to alcohol, provided the results of the
57 initial test shall not be inadmissible under this subsection if reasonable
58 efforts were made to have such additional test performed in
59 accordance with the conditions set forth in this subsection and such
60 additional test was not performed or was not performed within a
61 reasonable time, or the results of such additional test are not
62 admissible for failure to meet a condition set forth in this subsection;
63 and (6) evidence is presented that the test was commenced within two
64 hours of operation. In any prosecution under this section it shall be a
65 rebuttable presumption that the results of such chemical analysis
66 establish the ratio of alcohol in the blood of the defendant at the time
67 of the alleged offense, except that if the results of the additional test
68 indicate that the ratio of alcohol in the blood of such defendant is
69 [twelve-hundredths] ten-hundredths of one per cent or less of alcohol,
70 by weight, and is higher than the results of the first test, evidence shall
71 be presented that demonstrates that the test results and the analysis
72 thereof accurately indicate the blood alcohol content at the time of the
73 alleged offense.

74 Sec. 3. Subsections (g) and (h) of section 14-227a of the general
75 statutes are repealed and the following is substituted in lieu thereof
76 (*Effective October 1, 2008*):

77 (g) Any person who violates any provision of subsection (a) of this
78 section shall: (1) For conviction of a first violation, (A) be fined not less
79 than five hundred dollars or more than one thousand dollars, and (B)
80 be (i) imprisoned not more than six months, forty-eight consecutive
81 hours of which may not be suspended or reduced in any manner, or

82 (ii) imprisoned not more than six months, with the execution of such
83 sentence of imprisonment suspended entirely and a period of
84 probation imposed requiring as a condition of such probation that
85 such person perform one hundred hours of community service, as
86 defined in section 14-227e, and (C) have such person's motor vehicle
87 operator's license or nonresident operating privilege suspended for
88 one year; (2) for conviction of a second violation [within ten years after
89 a prior conviction] for the same offense, (A) be fined not less than one
90 thousand dollars or more than four thousand dollars, (B) be
91 imprisoned not more than two years, one hundred twenty consecutive
92 days of which may not be suspended or reduced in any manner, and
93 sentenced to a period of probation requiring as a condition of such
94 probation that such person perform one hundred hours of community
95 service, as defined in section 14-227e, and (C) (i) have such person's
96 motor vehicle operator's license or nonresident operating privilege
97 suspended for three years or until the date of such person's twenty-
98 first birthday, whichever is longer, or (ii) if such person has been
99 convicted of a violation of subdivision (1) of subsection (a) of this
100 section on account of being under the influence of intoxicating liquor
101 or of subdivision (2) of subsection (a) of this section, have such
102 person's motor vehicle operator's license or nonresident operating
103 privilege suspended for one year and be prohibited for the two-year
104 period following completion of such period of suspension from
105 operating a motor vehicle unless such motor vehicle is equipped with
106 a functioning, approved ignition interlock device, as defined in section
107 14-227j; and (3) for conviction of a third and subsequent violation
108 [within ten years after a prior conviction] for the same offense, (A) be
109 fined not less than two thousand dollars or more than eight thousand
110 dollars, (B) be imprisoned not more than three years, one year of which
111 may not be suspended or reduced in any manner, and sentenced to a
112 period of probation requiring as a condition of such probation that
113 such person perform one hundred hours of community service, as
114 defined in section 14-227e, and (C) have such person's motor vehicle
115 operator's license or nonresident operating privilege permanently
116 revoked upon such third offense. For purposes of the imposition of

117 penalties for a second or third and subsequent offense pursuant to this
118 subsection, a conviction under the provisions of subsection (a) of this
119 section in effect on October 1, 1981, or as amended thereafter, a
120 conviction under the provisions of either subdivision (1) or (2) of
121 subsection (a) of this section, a conviction under the provisions of
122 section 53a-56b or 53a-60d or a conviction in any other state of any
123 offense the essential elements of which are determined by the court to
124 be substantially the same as subdivision (1) or (2) of subsection (a) of
125 this section or section 53a-56b or 53a-60d, shall constitute a prior
126 conviction for the same offense.

127 (h) (1) Each court shall report each conviction under subsection (a)
128 of this section to the Commissioner of Motor Vehicles, in accordance
129 with the provisions of section 14-141. The commissioner shall suspend
130 the motor vehicle operator's license or nonresident operating privilege
131 of the person reported as convicted for the period of time required by
132 subsection (g) of this section. The commissioner shall determine the
133 period of time required by said subsection (g) based on the number of
134 convictions such person has had within the specified time period
135 according to such person's driving history record, notwithstanding the
136 sentence imposed by the court for such conviction. For the purpose of
137 determining such period of time required by subsection (g) of this
138 section, as amended, the commissioner shall maintain a record of each
139 conviction reported under subsection (a), as amended, for ten years,
140 except that for any such conviction on or after October 1, 2008, the
141 commissioner shall maintain such record for twenty years. (2) The
142 motor vehicle operator's license or nonresident operating privilege of a
143 person found guilty under subsection (a) of this section who is under
144 eighteen years of age shall be suspended by the commissioner for the
145 period of time set forth in subsection (g) of this section, or until such
146 person attains the age of eighteen years, whichever period is longer. (3)
147 The motor vehicle operator's license or nonresident operating privilege
148 of a person found guilty under subsection (a) of this section who, at the
149 time of the offense, was operating a motor vehicle in accordance with a
150 special operator's permit issued pursuant to section 14-37a shall be
151 suspended by the commissioner for twice the period of time set forth

152 in subsection (g) of this section. (4) If an appeal of any conviction
153 under subsection (a) of this section is taken, the suspension of the
154 motor vehicle operator's license or nonresident operating privilege by
155 the commissioner, in accordance with this subsection, shall be stayed
156 during the pendency of such appeal.

157 Sec. 4. Subsections (c) to (h), inclusive, of section 14-227b of the
158 general statutes are repealed and the following is substituted in lieu
159 thereof (*Effective October 1, 2008*):

160 (c) If the person arrested refuses to submit to such test or analysis or
161 submits to such test or analysis, commenced within two hours of the
162 time of operation, and the results of such test or analysis indicate that
163 such person has an elevated blood alcohol content, the police officer,
164 acting on behalf of the Commissioner of Motor Vehicles, shall
165 immediately revoke and take possession of the motor vehicle
166 operator's license or, if such person is a nonresident, suspend the
167 nonresident operating privilege of such person, for a twenty-four-hour
168 period. The police officer shall prepare a [written] report of the
169 incident and shall mail or otherwise transmit in accordance with this
170 subsection the report and a copy of the results of any chemical test or
171 analysis to the Department of Motor Vehicles within [three] five
172 business days. The report shall [be made on a form approved] provide
173 such information as prescribed by the Commissioner of Motor Vehicles
174 and shall be subscribed and sworn to under penalty of false statement
175 as provided in section 53a-157b by the arresting officer. The report
176 shall contain a certification by the arresting officer that such officer had
177 probable cause to arrest such person for a violation of subsection (a) of
178 section 14-227a, as amended by this act. If the person arrested refused
179 to submit to such test or analysis, the report shall be endorsed by a
180 third person who witnessed such refusal. The report shall set forth the
181 grounds for the officer's [belief that there was] certification of probable
182 cause to arrest such person for [operating a motor vehicle while under
183 the influence of intoxicating liquor or any drug or both] a violation of
184 subsection (a) of section 14-227a, as amended by this act, and shall
185 state that such person had refused to submit to such test or analysis

186 when requested by such police officer to do so or that such person
187 submitted to such test or analysis, commenced within two hours of the
188 time of operation, and the results of such test or analysis indicated that
189 such person had an elevated blood alcohol content. The Commissioner
190 of Motor Vehicles may accept a police report under this subsection that
191 is prepared and transmitted as an electronic record, including
192 electronic signature or signatures, in accordance with the provisions of
193 sections 1-266 to 1-286, inclusive, and subject to such security
194 procedures as the commissioner may prescribe.

195 (d) If the person arrested submits to a blood or urine test at the
196 request of the police officer, and the specimen requires laboratory
197 analysis in order to obtain the test results, the police officer shall not
198 take possession of the motor vehicle operator's license of such person
199 or, except as provided in this subsection, follow the procedures
200 subsequent to taking possession of the operator's license as set forth in
201 subsection (c) of this section. If the test results indicate that such
202 person has an elevated blood alcohol content, the police officer,
203 immediately upon receipt of the test results, shall notify the
204 Commissioner of Motor Vehicles and submit to the commissioner the
205 [written] report required pursuant to subsection (c) of this section.

206 (e) (1) Except as provided in subdivision (2) of this subsection, upon
207 receipt of such report, the Commissioner of Motor Vehicles may
208 suspend any operator's license or nonresident operating privilege of
209 such person effective as of a date certain, which date shall be not later
210 than thirty days after the date such person received notice of such
211 person's arrest by the police officer. Any person whose operator's
212 license or nonresident operating privilege has been suspended in
213 accordance with this subdivision shall automatically be entitled to a
214 hearing before the commissioner to be held in accordance with the
215 provisions of chapter 54 and prior to the effective date of the
216 suspension. The commissioner shall send a suspension notice to such
217 person informing such person that such person's operator's license or
218 nonresident operating privilege is suspended as of a date certain and
219 that such person is entitled to a hearing prior to the effective date of

220 the suspension and may schedule such hearing by contacting the
221 Department of Motor Vehicles not later than seven days after the date
222 of mailing of such suspension notice.

223 (2) If the person arrested (A) is involved in an accident resulting in a
224 fatality, or (B) has previously had such person's operator's license or
225 nonresident operating privilege suspended under the provisions of
226 section 14-227a, [during the ten-year period preceding the present
227 arrest] as amended by this act, upon receipt of such report, the
228 Commissioner of Motor Vehicles may suspend any operator's license
229 or nonresident operating privilege of such person effective as of the
230 date specified in a notice of such suspension to such person. Any
231 person whose operator's license or nonresident operating privilege has
232 been suspended in accordance with this subdivision shall
233 automatically be entitled to a hearing before the commissioner to be
234 held in accordance with the provisions of chapter 54. The
235 commissioner shall send a suspension notice to such person informing
236 such person that such person's operator's license or nonresident
237 operating privilege is suspended as of the date specified in such
238 suspension notice, and that such person is entitled to a hearing and
239 may schedule such hearing by contacting the Department of Motor
240 Vehicles not later than seven days after the date of mailing of such
241 suspension notice. Any suspension issued under this subdivision shall
242 remain in effect until such suspension is affirmed or such operator's
243 license or nonresident operating privilege is reinstated in accordance
244 with subsections (f) and (h) of this section.

245 (f) If such person does not contact the department to schedule a
246 hearing, the commissioner shall affirm the suspension contained in the
247 suspension notice for the appropriate period specified in subsection (i)
248 or (j) of this section.

249 (g) If such person contacts the department to schedule a hearing, the
250 department shall assign a date, time and place for the hearing, which
251 date shall be prior to the effective date of the suspension, except that,
252 with respect to a person whose operator's license or nonresident

253 operating privilege is suspended in accordance with subdivision (2) of
254 subsection (e) of this section, such hearing shall be scheduled not later
255 than thirty days after such person contacts the department. At the
256 request of such person or the hearing officer and upon a showing of
257 good cause, the commissioner may grant one [continuance for a period
258 not to exceed fifteen days] or more continuances. The hearing shall be
259 limited to a determination of the following issues: (1) [Did the police
260 officer have probable cause to arrest the person for operating a motor
261 vehicle while under the influence of intoxicating liquor or any drug or
262 both; (2) was] Was such person placed under arrest; [(3)] (2) did such
263 person refuse to submit to such test or analysis or did such person
264 submit to such test or analysis, commenced within two hours of the
265 time of operation, and the results of such test or analysis indicated that
266 such person had an elevated blood alcohol content; and [(4)] (3) was
267 such person operating the motor vehicle. In the hearing, the results of
268 the test or analysis shall be sufficient to indicate the ratio of alcohol in
269 the blood of such person at the time of operation, except that if the
270 results of the additional test indicate that the ratio of alcohol in the
271 blood of such person is [twelve-hundredths] ten-hundredths of one
272 per cent or less of alcohol, by weight, and is higher than the results of
273 the first test, evidence shall be presented that demonstrates that the
274 test results and analysis thereof accurately indicate the blood alcohol
275 content at the time of operation. The fees of any witness summoned to
276 appear at the hearing shall be the same as provided by the general
277 statutes for witnesses in criminal cases.

278 (h) If, after such hearing, the commissioner finds on any one of the
279 said issues in the negative, the commissioner shall reinstate such
280 license or operating privilege. If, after such hearing, the commissioner
281 does not find on any one of the said issues in the negative or if such
282 person fails to appear at such hearing, the commissioner shall affirm
283 the suspension contained in the suspension notice for the appropriate
284 period specified in subsection (i) or (j) of this section. The
285 commissioner shall render a decision at the conclusion of such hearing
286 or send a notice of the decision by bulk certified mail to such person
287 not later than [thirty] sixty days [or, if a continuance is granted, not

288 later than forty-five days] from the date such person received notice of
289 such person's arrest by the police officer. The notice of such decision
290 sent by bulk certified mail to the address of such person as shown by
291 the records of the commissioner shall be sufficient notice to such
292 person that such person's operator's license or nonresident operating
293 privilege is reinstated or suspended, as the case may be. [Unless a
294 continuance of the hearing is granted pursuant to subsection (g) of this
295 section, if the commissioner fails to render a decision within thirty
296 days from the date such person received notice of such person's arrest
297 by the police officer, the commissioner shall reinstate such person's
298 operator's license or nonresident operating privilege, provided
299 notwithstanding such reinstatement the commissioner may render a
300 decision not later than two days thereafter suspending such operator's
301 license or nonresident operating privilege.]

302 Sec. 5. Subsection (k) of section 14-227b of the general statutes, as
303 amended by section 34 of public act 08-1 of the January 2008 special
304 session, is repealed and the following is substituted in lieu thereof
305 (*Effective October 1, 2008*):

306 (k) Notwithstanding the provisions of subsections (b) to (j),
307 inclusive, of this section, any police officer who obtains the results of a
308 chemical analysis of a blood sample taken from an operator of a motor
309 vehicle involved in an accident who suffered or allegedly suffered
310 physical injury in such accident, or who was determined by a police
311 officer to require treatment or observation at a hospital, shall notify the
312 Commissioner of Motor Vehicles and submit to the commissioner a
313 written report if such results indicate that such person had an elevated
314 blood alcohol content, and if such person was arrested for violation of
315 section 14-227a, as amended by this act, in connection with such
316 accident. The report shall be made on a form approved by the
317 commissioner containing such information as the commissioner
318 prescribes, and shall be subscribed and sworn to under penalty of false
319 statement, as provided in section 53a-157b, by the police officer. The
320 commissioner may, after notice and an opportunity for hearing, which
321 shall be conducted by a hearing officer on behalf of the commissioner,

322 in accordance with chapter 54, suspend the motor vehicle operator's
 323 license or nonresident operating privilege of such person for the
 324 appropriate period specified in subsection (i) or (j) of this section. Each
 325 hearing conducted under this subsection shall be limited to a
 326 determination of the following issues: (1) Whether [the police officer
 327 had probable cause to arrest the person for operating a motor vehicle
 328 while under the influence of intoxicating liquor or drug or both; (2)
 329 whether] such person was placed under arrest; [(3)] (2) whether such
 330 person was operating the motor vehicle; [(4)] (3) whether the results of
 331 the analysis of the blood of such person indicate that such person had
 332 an elevated blood alcohol content; and [(5)] (4) whether the blood
 333 sample was obtained in accordance with conditions for admissibility
 334 and competence as evidence as set forth in subsection [(j)] (k) of section
 335 14-227a. If, after such hearing, the commissioner finds on any one of
 336 the said issues in the negative, the commissioner shall not impose a
 337 suspension. The fees of any witness summoned to appear at the
 338 hearing shall be the same as provided by the general statutes for
 339 witnesses in criminal cases, as provided in section 52-260.

340 Sec. 6. Subsection (o) of section 14-227b of the general statutes is
 341 repealed and the following is substituted in lieu thereof (*Effective*
 342 *October 1, 2008*):

343 (o) For the purposes of this section, "elevated blood alcohol content"
 344 means (1) a ratio of alcohol in the blood of such person that is eight-
 345 hundredths of one per cent or more of alcohol, by weight, (2) if such
 346 person is operating a commercial motor vehicle, a ratio of alcohol in
 347 the blood of such person that is four-hundredths of one per cent or
 348 more of alcohol, by weight, or [(2)] (3) if such person is under twenty-
 349 one years of age, a ratio of alcohol in the blood of such person that is
 350 two-hundredths of one per cent or more of alcohol, by weight.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	14-1(a)(74)
Sec. 2	<i>October 1, 2008</i>	14-227a(a) and (b)

Sec. 3	<i>October 1, 2008</i>	14-227a(g) and (h)
Sec. 4	<i>October 1, 2008</i>	14-227b(c) to (h)
Sec. 5	<i>October 1, 2008</i>	14-227b(k)
Sec. 6	<i>October 1, 2008</i>	14-227b(o)

TRA *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Department of Motor Vehicles	TF - See Below	See Below	See Below
Judicial Dept.; Correction, Dept.	GF - Cost	Significant	Significant

Note: TF=Transportation Fund; GF=General Fund

Municipal Impact: None

Explanation

The bill extends the “lookback” period, from 10 to 20 years, for determining any prior offense for driving under the influence of alcohol or drugs. On average, each year there are 775 DUI convictions for second offenses¹ and 75 DUI convictions for third and subsequent offenses.² It is anticipated that doubling the “lookback” period would substantially increase the number of offenders with second or third DUI convictions. This would result in a significant state cost for incarceration and probation supervision. The bill also reduces the limit on blood alcohol content that is necessary to convict an operator of a commercial motor vehicle of driving under the influence, which could result in costs for incarceration and probation.

On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

The bill makes various changes to improve the Administrative Per Se hearing process is anticipated to result in reducing the number of incomplete arrest reports returned to police departments by the

¹ Conviction of a second violation carries a mandatory minimum prison sentence of 120 days, and a period of probation.

² Conviction of a third or subsequent offense carries a mandatory minimum prison sentence of 1 year, and a period of probation.

Department of Motor Vehicles.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 297*****AN ACT CONCERNING THE DEPARTMENT OF MOTOR VEHICLES
AND ADMINISTRATIVE PER SE PROCEDURES AND VIOLATIONS.*****SUMMARY:**

This bill makes several changes in both the criminal and administrative per se laws governing the operation of a motor vehicle under the influence of alcohol.

By law, it is a criminal violation to operate a motor vehicle, on the highway or elsewhere, (1) while under the influence of alcohol, drugs, or both or (2) with an “elevated blood alcohol content.” Someone is considered to have an elevated blood alcohol content when the ratio of alcohol in the blood is .08% or more, by weight, or, if under age 21, the ratio of alcohol in the blood is .02% or more. Anyone who receives a driver’s license in Connecticut is deemed by law to have given “implied consent” to a chemical test of his blood, breath, or urine to determine the presence of alcohol or drugs.

A police officer who has arrested someone for driving under the influence of alcohol or drugs and advised him of his constitutional rights can request the person to submit to a blood, breath, or urine test. If the person either (1) refuses to take the test or (2) takes the test and the results show an elevated blood alcohol content, the police officer sends the arrest report and test results to the Department of Motor Vehicles (DMV) and the person is subject to an administrative license suspension. This is called an “administrative per se” license suspension. This administrative license suspension operates entirely independently of the procedures for prosecuting the accused person on the criminal charge.

The bill:

1. decreases, from .08% to .04% the presumptive level for determining if a driver of a commercial motor vehicle is operating with an elevated blood alcohol level from;
2. requires DMV to keep prior convictions for driving under the influence of alcohol or drugs on a driver history for 20 rather than 10 years for purposes of determining second or subsequent violations of the law;
3. for administrative per se license suspension hearings, eliminates consideration of whether there was probable cause for the police officer to arrest the driver for operating under the influence of alcohol or drugs;
4. decreases the minimum time police must wait before administering the required second blood-alcohol test from 30 to 10 minutes and narrows the range of test results that requires a reverse extrapolation or "relation back" of the test results to establish the driver's blood-alcohol level at the actual time of operation of the vehicle;
5. gives police three days, rather than one day, to deliver a copy of the arrest report to the person arrested;
6. allows police to submit the required arrest documentation and test results to DMV for the administrative license suspension process electronically, gives them longer to do it, and gives the motor vehicle commissioner more time to render a decision following an administrative hearing; and
7. expands the circumstances under which blood test results from someone taken to a hospital can be used under the administrative per se process.

EFFECTIVE DATE: October 1, 2008

ELEVATED BLOOD ALCOHOL CONTENT

The bill expands the definition of “elevated blood alcohol content” to include operating a commercial motor vehicle with a blood-alcohol level of .04% or more. This applies to both the criminal violation and the administrative per se license suspension process. Thus, under the bill the presumptive level for determining if someone is driving a commercial motor vehicle while under the influence of alcohol is reduced from .08% to .04%. The law already requires someone found to have been driving a commercial motor vehicle with a blood-alcohol level of .04% or more to be disqualified from driving commercial vehicles for one year.

A commercial motor vehicle is one for which the driver must hold a commercial driver’s license. By law, these include vehicles designed and used to transport people or property, except for farming vehicles, fire apparatus or emergency vehicles, and recreational vehicles in private use, that:

1. have a gross vehicle weight rating over 26,000 pounds or a gross combination weight rating of more than 26,000 pounds inclusive of one or more towed units with gross weight ratings over 10,000 pounds;
2. are designed to transport 16 or more passengers, including the driver, or more than 10 passengers, including the driver, when the passengers are students under age 21 being transported to and from school; or
3. are transporting hazardous material in quantities that required placards under federal law or that are listed as a select agent or toxin under federal regulations.

DETERMINATION OF PRIOR OFFENSE

Current law specifies that someone commits a second or subsequent offense for driving under the influence of alcohol or drugs when the current offense occurs no more than 10 years after the date of an arrest that resulted in a previous conviction for a violation of the same

statutory provision. The bill increases this “lookback” period for determining any prior offense from 10 to 20 years. The expanded lookback period applies to both the criminal law and the administrative per se law. The bill directs the motor vehicle commissioner to maintain a record of any conviction occurring on or after October 1, 2008 for 20 years.

ADMISSIBILITY OF CHEMICAL TEST RESULTS AND ADMINISTRATION OF SECOND CHEMICAL TEST

Currently, in order for the results of a chemical test to be admissible in a criminal prosecution, the law requires a second test of the same type to be given to the accused person at least 30 minutes after the first test. The law also requires a true copy of the report to be mailed or personally delivered to the defendant within 24 hours or by the end of the next regular business day after the result is known. If the additional test results show the person’s blood-alcohol level to be .12% or less and the result is higher than the first test result, evidence must be presented that shows that the test results accurately indicate the blood alcohol content at the time of the alleged offense. This is known as “relation back.”

The bill (1) decreases the minimum time between the first and second tests from 30 minutes to 10 minutes and (2) lowers the blood-alcohol test result that triggers the relation back determination from .12% to .10%. It makes the same change from .12% to .10% in the relation back provisions of the administrative per se law. It also increases the period for delivery of a copy of the test result to not longer than three business days after the result is known.

ADMINISTRATIVE PER SE SUSPENSION HEARING

Elimination of Probable Cause Consideration

Currently, someone suspended by DMV for failing a blood-alcohol test or for refusing to take the test has one week from receiving the DMV suspension notice to request an administrative hearing. The hearing must be limited to a determination of these four specific issues:

1. Did the police officer have probable cause to arrest the person for operating under the influence of alcohol, drugs, or both?
2. Was the person placed under arrest?
3. Was the person operating the motor vehicle?
4. Did the person refuse to take the chemical test or did he take such a test, commenced within two hours of operation, and did the test results indicate an elevated blood alcohol level?

If the commissioner makes a negative finding for any of these four questions, he must reinstate the person's license. If all are found in the affirmative, the administrative suspension is upheld.

The bill eliminates consideration of whether there was probable cause for the arrest from the hearing process. Instead, it requires only that the arresting officer's report to the DMV contain the officer's certification that there was probable cause to make the arrest.

Hospital Blood Test Results

Currently, if a police officer obtains the results of a chemical analysis of a blood sample from a driver involved in an accident who suffers or allegedly suffers physical injury, the results are submitted to DMV for an administrative per se suspension proceeding similar to the normal procedure following an arrest not involving hospital treatment. The bill expands the circumstances under which such blood test results can be used to include situations where the police officer determines that the person requires treatment or observation at a hospital, even if an injury is not apparent.

Process Changes

The bill makes several changes in the administrative per se suspension process. Currently, the commissioner may grant one continuance of the hearing for up to 15 days. If he fails to render a decision within 30 days from the date the person received notice of arrest from the police officer (or 45 days if a continuance is granted), he

must reinstate the person's license or nonresident operating privilege. Notwithstanding this reinstatement, the commissioner may render a decision within the following two days after suspending the license or privilege.

The bill gives the commissioner 60 instead of 30 days to render a decision, eliminates any limitation on continuances that may be granted during that period, and eliminates the reinstatement consequence should the commissioner fail to render his decision within the prescribed period. It does not specify what occurs should the commissioner not make a decision within 60 days, but one possible outcome is that the suspension would go into effect until a final decision is made.

Currently, the arresting officer's report must be submitted to the DMV in written form within three business days. The bill, instead, (1) allows these reports to be submitted as an electronic record according to procedures the commissioner prescribes, including electronic signatures, and (2) gives the police five rather than three business days to submit the report.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute

Yea 33 Nay 0 (03/05/2008)